

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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**ONSTAR CORPORATION,**  
a Delaware corporation,

*Plaintiff,*

vs.

**HONORABLE** \_\_\_\_\_

**CIVIL ACTION NO.** \_\_\_\_\_

**MICRAL, INC.,** a Minnesota corporation  
and **MARTIN ALPERT, M.D.,** an individual,

*Defendants.*

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**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff OnStar Corporation ("plaintiff" or "OnStar") alleges against defendants Micral, Inc. and Martin Alpert, M.D. ("defendants") the following:

### **I. THE PARTIES**

1. Plaintiff OnStar is a Delaware corporation having its principal place of business in Detroit, Michigan.

2. Upon information and belief, defendant Micral, Inc. is a Minnesota corporation with an identified location at 26061 Annesley Rd., Beachwood, Ohio 44122.

3. Upon information and belief, defendant Martin Alpert, M.D. ("Dr. Alpert") resides at 26061 Annesley Rd., Beachwood, Ohio 44122 and purports to be the inventor and owner of U.S. Pat. No. 5,742,666 ("the '666 patent"). (Exhibit A.)

### **II. JURISDICTION AND VENUE**

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This action is for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 to resolve an actual controversy between the parties as to the validity and enforceability of the '666 patent.

### **III. BACKGROUND**

6. On April 21, 1998, the United States Patent and Trademark Office issued the '666 patent listing Dr. Alpert as the inventor and Tele Digital Development, Inc. as the assignee of the '666 patent. (Exhibit A.)

7. Upon information and belief, Micral, Inc. is the current assignee of the '666 patent. (Exhibit B.)

8. Plaintiff is a wholly owned subsidiary of General Motors Corporation ("GM").

9. Plaintiff provides services to specially equipped GM vehicles in the United States.

10. On May 5, 2008, defendant Dr. Alpert wrote a letter to GM and the President of OnStar alleging that OnStar infringes the '666 patent. (Exhibit C.)

11. On August 8, 2008, Mark Wallach, counsel for Dr. Alpert, wrote the President of OnStar alleging once again that OnStar infringes the '666 patent. (Exhibit D.)

12. Based on the activities of defendants, plaintiff has a reasonable apprehension of suit from one or more of the defendants.

13. Plaintiff denies liability under the '666 patent and alleges, *inter alia*, that the '666 patent is invalid and/or unenforceable.

**COUNT I**  
**DECLARATORY JUDGMENT OF PATENT INVALIDITY**

14. Plaintiff adopts and incorporates by reference, the information contained in paragraphs 1 through 13 above.

15. Upon information and belief, the '666 patent is invalid for failure to comply with one or more of the requirements for patentability, including, but not limited to, 35 U.S.C. §§ 102, 103, and 112.

16. Plaintiff prays for judgment against defendants as recited in Section IV below.

**COUNT II**  
**DECLARATORY JUDGMENT OF PATENT UNENFORCEABILITY**

17. Plaintiff adopts and incorporates by reference, the information contained in paragraphs 1 through 16 above.

18. Upon information and belief, the '666 patent is unenforceable, *inter alia*, for failure to satisfy one or more requirements of the patent laws of the United States, including, but not limited to, the duty of disclosure with the U.S. Patent and Trademark Office.

19. Plaintiff prays for judgment against defendants as recited in Section IV below.

**IV. PRAYER FOR RELIEF**

Plaintiff prays for the following relief:

- A. a declaration that the '666 patent is invalid;
- B. a declaration that the '666 patent is unenforceable;
- C. an award of costs;
- D. that plaintiff be awarded such other and further relief that the Court deems

just and proper, including reasonable attorneys' fees.

Respectfully submitted,

By: \_\_\_\_\_

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Dated: August 25, 2008

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